

Chapter 13: Tribal Enforcement

Section 13.000: Understanding Tribal Policy

This section discusses the basis for tribal-specific child support policies and gives definitions of specific tribal-related terms.

CONTENTS

Laws	42 USC 654 Chapter 26.25 RCW cooperative child support services - tribes Chapter 37.12 RCW tribal relations Washington State Centennial Accord of 1989
Policy	<p>Treat all federally recognized tribes as independent sovereign governments.</p> <p>Do not take garnishment actions against Indian tribes, enterprises, or Indian owned businesses on a reservation. Tribes have sovereign immunity from these actions.</p> <p>Work in partnership with Indian tribes, on a government-to-government basis, to provide culturally relevant child support services.</p> <ul style="list-style-type: none">• DSHS must consult with tribes regarding plans, budgets, policies and procedures affecting American Indian people.• DCS seeks to work with Indian tribes to develop informal processes and cooperative agreements to address child support.
Procedure	Consult your regional Tribal Liaison, Tribal Claims Officer or the ESA State Tribal Relations Unit (STRU) with questions regarding tribal matters.
Visual Aids	Tribal Relations Internet site SEMS Web TI - Tribal Information
Automated Actions	
SEMS Screens	BC, OR, IA, CC, BI
Forms Used	Most DCS forms note procedures for tribal cases.
Hearing and Conference Board Rights	Refer all cases to the Regional Tribal Liaison or Tribal Claims Officer.
See Also	DSHS Administrative Policy 7.01 Federal Indian Case Law and Policy Treaties U.S. Constitution

PROCEDURES

A. What is Indian law?

1. Indian law is based on the legal/political relationship between the United States and Indian tribes.
 - a. It encompasses laws created by treaties, statutes, executive orders, case law, and administrative law.
 - b. These laws define and implement the relationship between the federal government, Indian tribes, state government, and individuals.

B. What does the U.S. Constitution say regarding Indian affairs?

1. The U.S. Constitution clearly recognizes the governmental status of Indian tribes and creates the basis for the unique federal relationship with tribal governments.
2. Primarily, four clauses in the U.S. Constitution define congressional authority over Indian affairs:
 - a. The Commerce Clause (Article I, Section 8, 3.);
 - b. The Treaty Clause (Article II, Section 2, 2.);
 - c. The Supremacy Clause (Article VI, 2.);
 - d. The Property Clause.

C. What is tribal *sovereignty*?

1. *Sovereignty* is the right or power that comes from itself, and no other source, that a government draws upon to govern.
 - a. Tribal *sovereignty* is also known as tribal self-governance.
 - b. Indian tribes enjoy all inherent powers of self-government except those Congress has specifically removed.
2. Similar to other nations or states, each tribe has its own laws, policies and procedures.
 - a. The current status of tribes has been described as " quasi-sovereign nations."

D. What is the difference between an *Indian reservation* and *Indian country*?

1. An *Indian reservation* is simply land that is set aside for a tribe or tribes.
2. *Indian country* refers to all the land under the supervision of the United States government that is set aside primarily for the use of Indians.
 - a. *Indian country* includes *reservations*, dependent Indian communities, allotment lands, and trust lands.

E. What is the *Centennial Accord*?

1. This is the *1989 Centennial Accord*. It is the cornerstone of the formal state/tribal relationship between the State of Washington and the federally recognized tribes in the state.
 - a. The *Accord* specifically affirms that the "respective *sovereignty* of the state and each federally recognized tribe provide paramount authority for that party to exist and to govern."
 - b. The *Accord* "illustrates the commitment by the parties to implementation of the government-to-government relationship. This relationship respects the sovereign status of the parties, enhances and improves communication between them, and facilitates the resolution of issues."

F. Does DSHS have policies concerning Indian tribes?

1. DSHS Administrative Policy 7.01 states the department's commitment to planning and service delivery to American Indian governments and communities.
2. Some of the policy requirements include having each DSHS division:
 - a. Consult with tribes regarding plans, budgets, policies, manuals and operational procedures which affect American Indian people;
 - b. Ensure programs and services are culturally relevant; and,
 - c. Provide training to DSHS staff on major principles of federal Indian law.

G. Which has jurisdiction over child support, the state or the tribe?

1. Both have jurisdiction. Concurrent jurisdiction exists with regard to child support.
 - a. In 1953, the plenary power of Congress over Indian tribes resulted in the enactment of P.L.280, which allowed states to assume jurisdiction over *Indian country* within their borders.
 - b. Prior to the amendment in 1968 requiring tribal consent, the State of Washington assumed jurisdiction over non-Indians in *Indian country* and over Indians on trust lands in *Indian country*, in eight categories, one of which is domestic relations.
 - i. This jurisdiction by the State of Washington is not exclusive, but rather, concurrent with tribal jurisdiction over the same people or subject matter.

H. Do tribes have immunity from lawsuits and garnishment actions?

1. Yes. Sovereign immunity from suit is an inherent right of all governments, including the federal, state and tribal governments. Case law has established that suits against Indian tribes are barred by sovereign immunity, and this includes immunity from garnishment actions.

I. What does the RCW say about state and tribal child support issues?

1. Chapter 26.25 RCW, Cooperative Child Support Services - Indian Tribes, encourages DCS and Indian tribes to enter into cooperative agreements

that will assist the state and tribal governments in carrying out their responsibilities.

2. The purpose of cooperative agreements is to enable the state and the tribes to better provide child support services to Indian children: "The legislature recognizes that the preferred method for handling cases where all or some of the parties are enrolled members living on the tribal *reservation* is to develop an agreement so that appropriate cases are referred to the tribe to be processed in tribal court."
3. Cooperative agreements serve the best interests of the children

J. What is a DCS tribal case?

1. A tribal case is one that has, at the minimum, one or more of the following:
 - a. An NCP who is a member of a federally recognized Washington tribe living on or near a *reservation*.
 - b. An NCP who is employed by the tribe, a tribal enterprise, or an Indian owned business located on a *reservation* or trust land.
 - c. Parties who are included under a cooperative child support process or agreement.
 - d. Other tribal issues.

K. What does it mean to be near a *reservation*?

1. DCS policy uses this term based upon a U.S. Supreme Court Decision, *Morton v Ruiz*, 415 US 199 (1974). This case defines an Indian living near a *reservation* to include an unassimilated Indian living off a *reservation* who maintains close economic and social ties with that *reservation*.
2. Contact your local Tribal Liaison or Tribal Claims Officer if you have questions regarding this term.